

The Code of Ethics: Our Promise of Professionalism

The REALTORS® Code of Ethics
Member Education Program

Maggie Curiel, PSA ePro AHWD

VP of Coral Gables, Professional Standards, &
Broker Relations

maggie@miamire.com | 305-468-7089



Xochitl Rieche

Professional Standards Manager

xochi@miamire.com | 305-468-7044

Evian White De Leon

Chief Legal Counsel

evian@miamire.com | 305-468-7000



Course Objectives

1

Identify key aspirational concepts found in the Preamble to the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics

2

Describe “general business” ethics, and compare and contrast the REALTORS®’ Code of Ethics

3

Describe the concepts established in various Articles of the Code of Ethics and identify possible violations of the Code specifically related to those Articles

4

Describe the professional standards process for enforcing the Code of Ethics, including the duty to arbitrate

5

Identify critical elements of due process as they relate to Code enforcement

6

Identify how the Code of Ethics should be used in daily business practices.

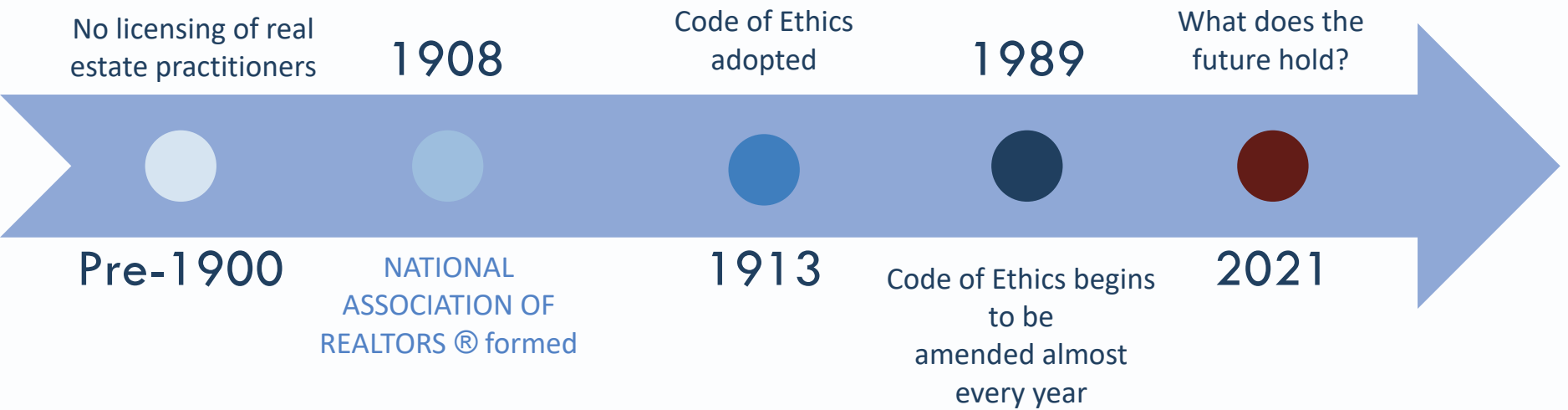
7

Explain how the Pathways to Professionalism tool provides guidelines for respecting property, the public, and peers.

PART 1: History of the Code of Ethics



History of the Code of Ethics



The Code of Ethics is:

- Our commitment to professionalism
- Recognized as the measure of high standards in real estate
- The “Golden Thread” that binds the REALTOR® family together
- A living document that evolves with the real estate business
- It is never opposed to the law.

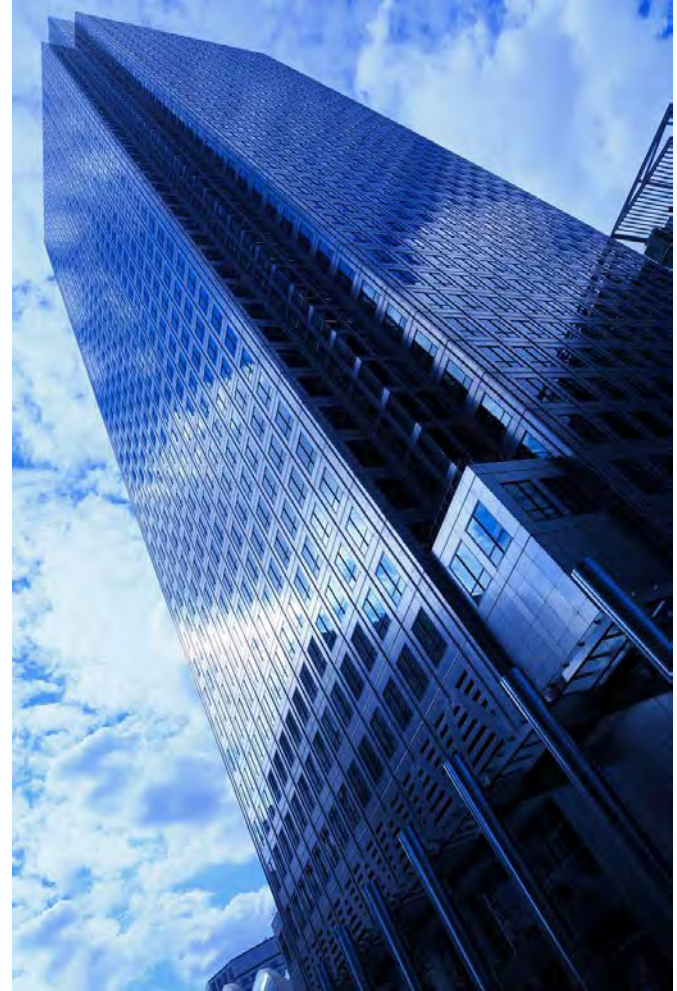
Code of Ethics

“The national real estate organization may claim to be the second trade or business group in the United States to follow examples of the professions of medicine, law, and engineering in formulating a Code of Ethics.”

Pearl Davies, *History of Real Estate in America*

Business Best Practices

- Code of Ethics
- MIAMI REALTORS® Bylaws
- Industry standards
- Company policies
- Federal, state, and local laws

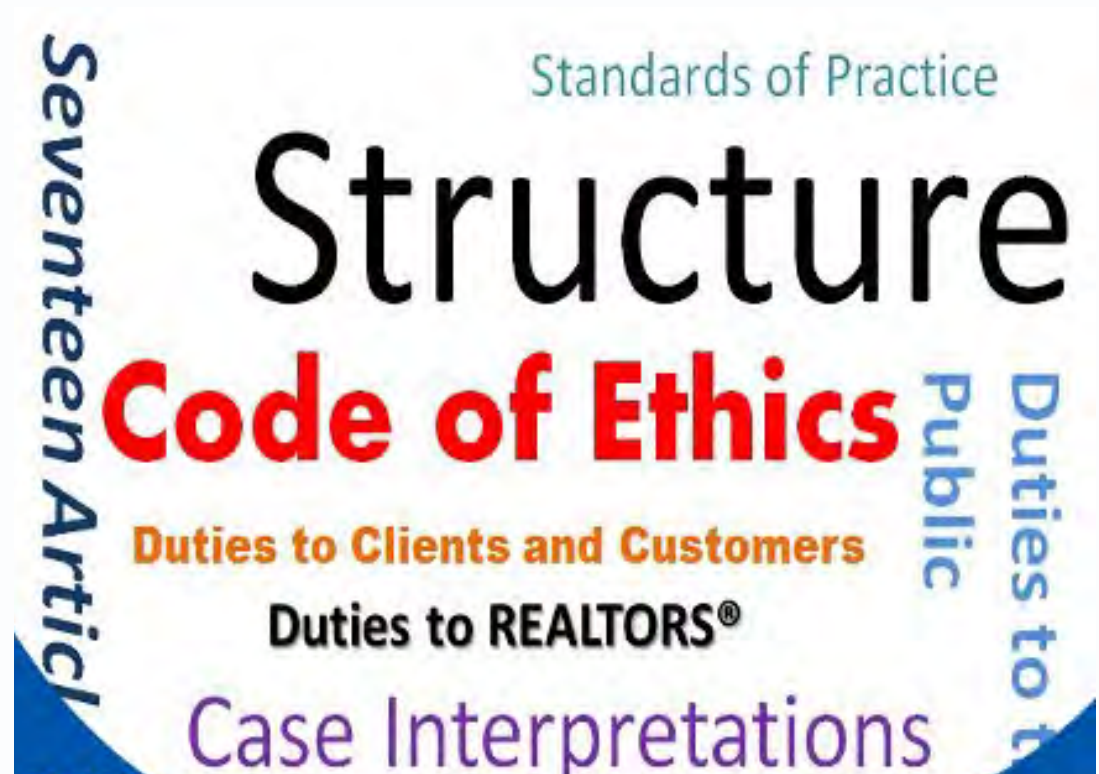


REALTORS® share one common characteristic:

Regardless of real estate business specialty, **all REALTORS®** are bound by the Code of Ethics.



PART 2:
STRUCTURE AND
MAJOR
CATEGORIES OF
THE CODE



Golden Rule

Whatsoever ye
would that
others should
do to you,
do ye even so to
them.



Structure of the Code of Ethics

Three Sections

- Duties to Clients and Customers
- Duties to the Public
- Duties to Other REALTORS[®]

<http://bit.ly/articlesposter>

Structure of the Code of Ethics

17 Articles

- Each section is composed of Articles, which are broad statements of ethical principles
- Only Articles of the Code may be violated

[Narrative Explanation:](#)

<http://bit.ly/articlesexplained>

Structure of the Code of Ethics

Standards of Practice

- Support, interpret, and amplify each Article
- May not be charged, but may be cited in support of an alleged violation

Official Case Interpretations

Factual situations
for each Article
and/or Standard
of Practice of the
Code



<http://bit.ly/caseinterpretationscoe>



Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker.

Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative.

Duties to Clients and Customers

Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent. When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation.

Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients.

Duties to Clients and Customers

Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate. REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

Duties to the Public

Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional.

Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes.

Duties to Realtors®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of their Board rather than litigate the matter. In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award. The obligation to participate in mediation or arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate or arbitrate and be bound by any resulting agreement or award.

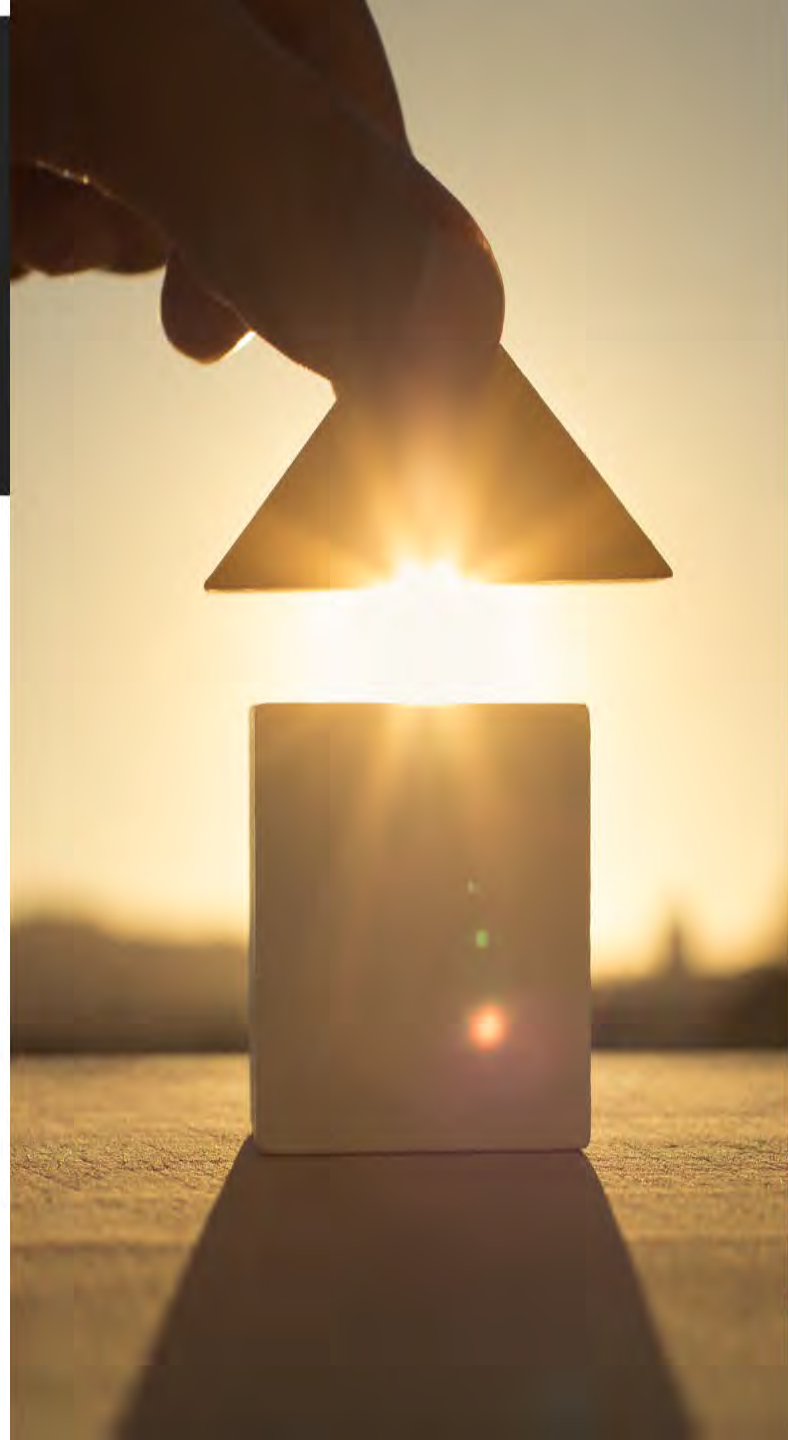
Change to Code of Ethics

CHANGES TO THE BYLAWS & CODE OF ETHICS

1. New Standard of Practice 10-5 Prohibits Discriminatory Speech and Conduct
2. Changes to Policy Statement 29 and the Code of Ethics' Applicability to ALL of a REALTOR®'s Activities
3. Revised Definition of "Public Trust"

SOCIAL MEDIA BEST PRACTICES

RESOURCES



BACKGROUND

On November 13, 2020, NAR's Board of Directors voted to approve changes to the Bylaws and Code of Ethics. The changes focus on REALTORS®' language and actions and prohibit REALTORS® from using harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity in ANY context.



WHAT YOU NEED TO KNOW

01

NEW STANDARD OF PRACTICE 10-5 PROHIBITS DISCRIMINATORY SPEECH AND CONDUCT

SOP 10-5: REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

02

CHANGES TO POLICY STATEMENT 29 AND THE CODE OF ETHICS' APPLICABILITY TO A REALTOR®'S ACTIVITIES

Expands the applicability of the Code of Ethics to ALL of a REALTOR®'S activities. Even so, most Articles and the Standards of Practice remain specific to real estate transactions and other real-estate related activities.

03

REVISED DEFINITION OF "PUBLIC TRUST"

Previously, "public trust" was only defined as misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. Now, it is expanded to include all discrimination against the protected classes in Article 10 and all fraud. MIAMI is required to share these final ethics decisions with FREC.



01

NEW STANDARD OF PRACTICE 10-5 PROHIBITS DISCRIMINATORY SPEECH AND CONDUCT

ARTICLE 10:

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

STANDARD OF PRACTICE 10-5:

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

HARASSING SPEECH, HATE SPEECH, EPTHETS, AND SLURS

APPENDIX XII TO PART FOUR:

Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29 (<https://bit.ly/appendixxii>)

Appendix XII to Part Four Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities.

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

While the overall focus of Standard of Practice 10-5 is on what might be loosely termed "offensive" or "discriminatory" speech, Hearing Panels should be clear that the Standard of Practice is narrowly limited to conduct related to the requirements of equal professional service of Article 10. Hearing Panels should also be fully aware of the nature and scope of the Standards of Practice under Article 10 and their relationship to fair housing law as described in Appendix III to Part Four of the Code of Ethics and Arbitration Manual. As described in Appendix III, Article 10 and its Standards of Practice fully integrate the five basic fair housing obligations that were recognized by NAR's Code of Fair Housing Practices before it was sunset.

Hearing Panels should note that while all of the Standards of Practice under Article 10 inform them as to the interpretation and application of Standard of Practice 10-5, Standard of Practice 10-3 is particularly analogous in its application to discriminatory speech in advertising based on the protected classes of Article 10.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed "offensive" or "discriminatory" by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs **based on** the protected classes of Article 10 are prohibited. The terms "harassing speech," "hate speech," "epithets," and "slurs" can be commonly understood by use of a dictionary as well as other easily available references.

For example, NAR's Code of Conduct and Anti-Harassment Policy clearly defines "harassment" and "sexual harassment."

"Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person's sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.

Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or

circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic."

"Sexual Harassment" includes not only physical acts but also includes verbal and non-verbal/non-physical acts.

"Sexual harassment can be:

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.
- Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. ..."

Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes.

In similar fashion, Merriam Webster's Dictionary defines "hate speech," "epithets," and "slurs" as follows:

Hate Speech: "speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability)."

Epithet: "a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; **be:** a disparaging or abusive word or phrase"

Slur: "an insulting or disparaging remark or innuendo; **ASPERSION;** **be:** a shaming or degrading effect; STAIN, STIGMA"

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic.

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.



02

CHANGES TO POLICY STATEMENT 29 AND THE CODE OF ETHICS' APPLICABILITY

BEFORE: While REALTORS® are encouraged to follow the principles of the Code of Ethics in all of their activities, a REALTOR® shall be subject to disciplinary action under the Code of Ethics only with respect to real estate related activities and transactions involving the REALTOR®.

NOW: A REALTOR® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities.



03

REVISED DEFINITION OF “PUBLIC TRUST”

BEFORE: "Public trust" was only defined as demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

NOW: "Public trust" is expanded to include ALL discrimination against the protected classes in Article 10 and ALL fraud because they are considered "particularly egregious violations." MIAMI REALTORS® is now required to share final ethics decisions with FREC when they find REALTORS® in violation of the Code of Ethics in instances where there is reason to believe that the public trust, as expanded, may have been violated.

WHAT ABOUT YOUR FIRST AMENDMENT RIGHTS?

5. This proposed new Standard of Practice seems to limit my right to free speech as established by the First Amendment to the Constitution. How can NAR legally adopt a policy like this?

The First Amendment provides that neither the United States Congress nor any state may abridge the freedom of speech of American citizens. With some exceptions, the First Amendment does not prohibit a private organization from restricting the speech of its members, employees, or users. NAR is a private association that is supported by dues from members, is not exercising any governmental function, and has no subpoena power or other powers generally available to state agencies. As such, the First Amendment does not preclude NAR from imposing this ethical duty as a condition of membership.



430 N. Michigan Ave
Chicago, IL 60611-4087
(800) 874-6500
www.nar.realtor





EFFECTIVE DATE

NOVEMBER 13, 2020

The changes to the NAR Bylaws and Code of Ethics are effective November 13, 2020.

They are NOT retroactive, which means they do not apply to behavior that occurred before November 13, 2020.



RESOURCES

NAR PROFESSIONAL STANDARDS COMMITTEE RECOMMENDATIONS

Please visit the link below for information on the Committee's recommendations, as well as frequently asked questions and other resources.

bit.ly/narrecommendations



[Home](#)

[National Leadership](#)

[Committee Members & Liaisons](#)

NAR Professional Standards Committee Recommendations

Approved by NAR Board of Directors on November 13, 2020

The NAR Professional Standards Committee met on October 5, 2020, to consider recommendations from its Interpretations and Procedures Advisory Board on the Code of Ethics' applicability to discriminatory speech and conduct. The Committee approved the Advisory Board's recommendations, and six of them were presented to and approved by the NAR Board of Directors at their November 13, 2020 meeting. The changes will be effective immediately. Training schedules and materials will be available in the coming weeks.

Please see below for information on the Committee's recommendations, as well as frequently asked questions and other resources.



QUESTIONS?

Evian White De Leon, Esq.
Chief Legal Counsel

305.468.7000

evian@miamire.com

PROFESSIONAL STANDARDS TEAM

Maggie Curiel, PSA ePro AHWD
**VP of Coral Gables, Professional Standards, &
Broker Relations**

305.468.7089

Maggie@miamire.com

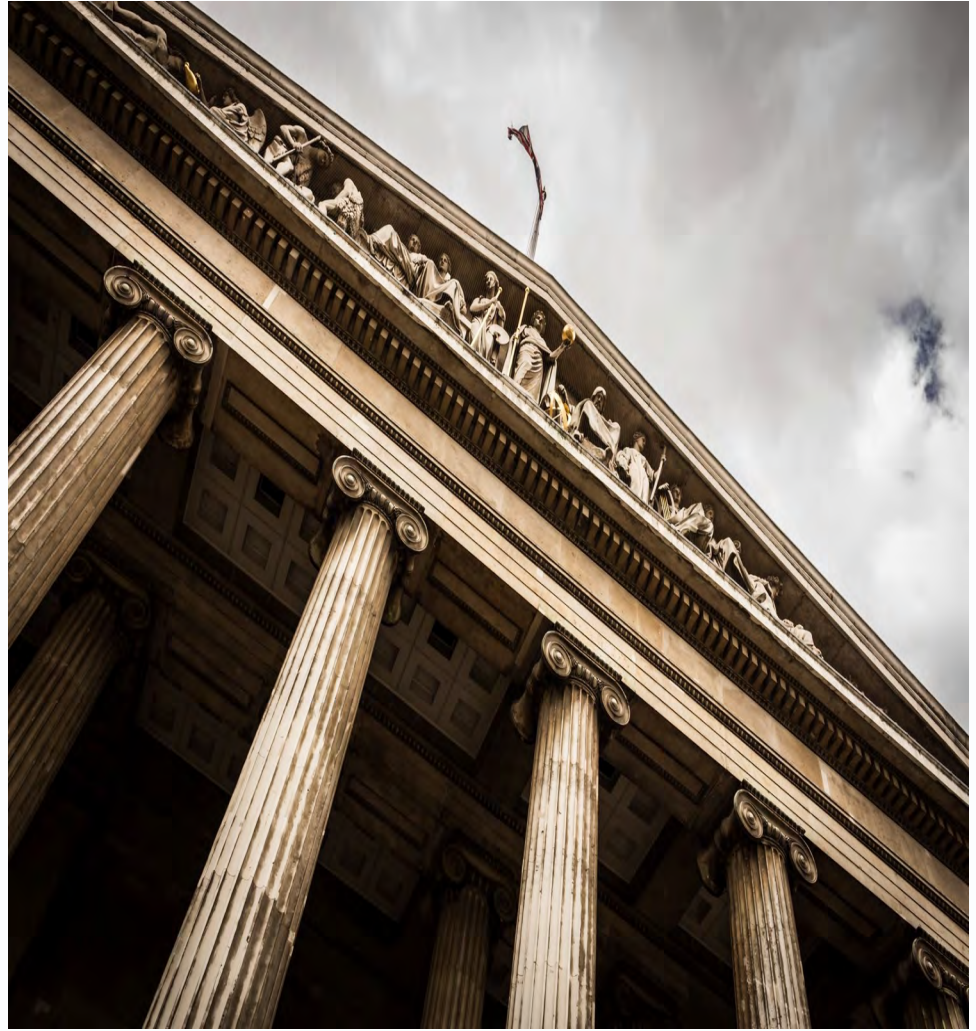
Xochitl Rieche
Professional Standards Manager

305.468.7044

xochi@miamire.com



PART 3: PROFESSIONAL STANDARDS COMMITTEE

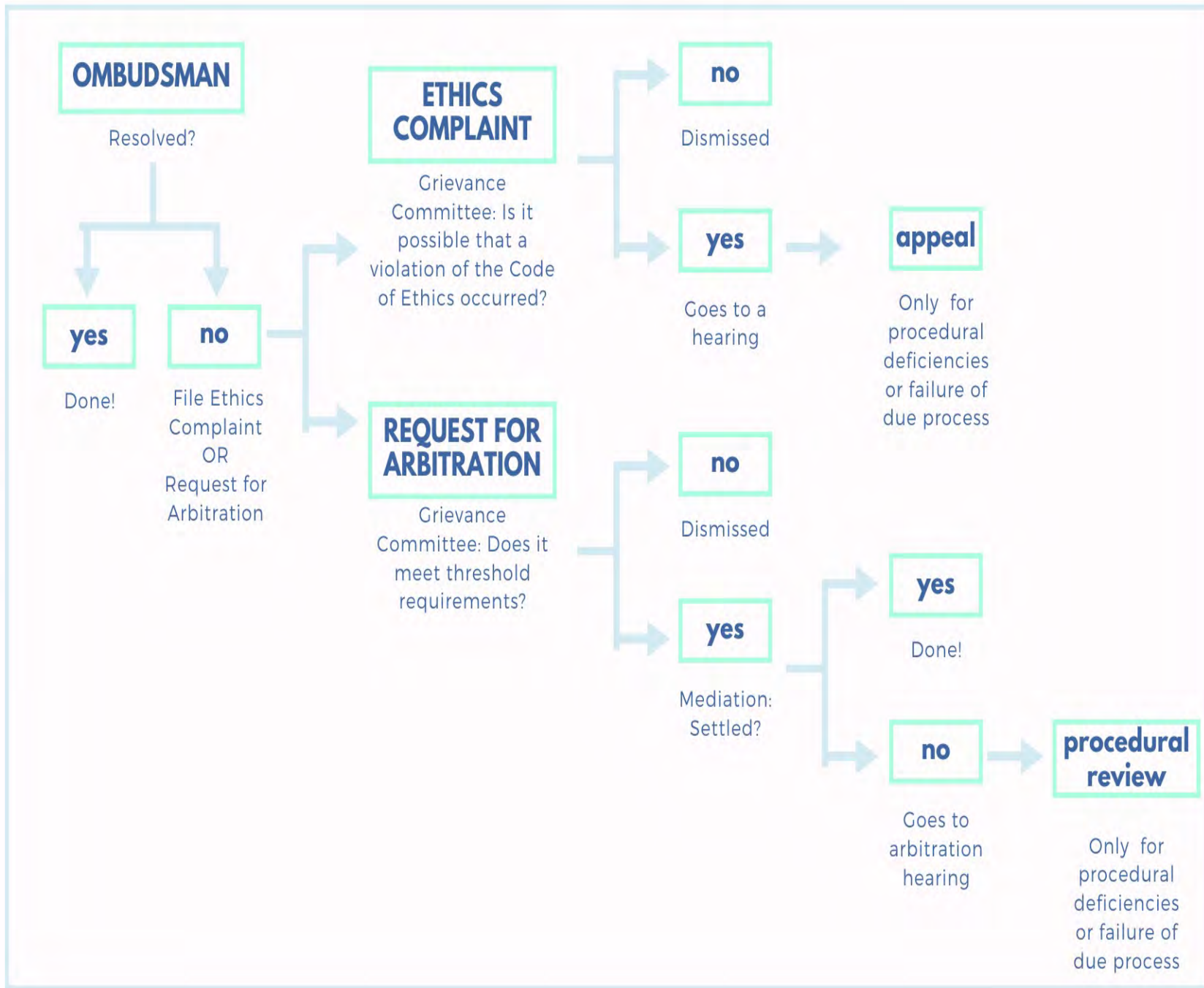


-Association Staff

- All communication and case administration flow through Association staff.
- Explains process, provides all forms, and manages documents from initial phone call to final notification after hearing. Ensures that established procedures are followed.
- Receives and disburses all filing fees and deposits.
- Does **not** make determinations regarding merits but assists in ensuring due process and fairness afforded.

-Grievance Committee

-Professional Standards Committee



OMBUDSMAN SERVICES



What is an Ombudsman?

An Ombudsman
is an individual appointed to
resolve disputes
through
constructive communication
and advocating for
consensus and understanding.



Role of the Ombudsman

The ombudsman's role is primarily communication and conciliation, not adjudication.

Ombudsmen DO:

Anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and charges of unethical conduct.

Ombudsmen DON'T:

Determine whether ethics violations have occurred or who is entitled to what amount of money.



What types of issues do Ombudsmen deal with?

General questions about real estate practice

Transaction details

Ethical practice

Enforcement issues

Questions and complaints about members

Declining, Resolving, and Complying with Ombudsman Services

- Complainants do not have to accept the services of an ombudsman
- The formal ethics complaint will continue to be processed until withdrawn by the complainant
- The complainant may resubmit the original complaint if they refuse to comply with the terms of a mutually agreed on resolution

Referrals

Ombudsmen **CANNOT** refer concerns about **conduct of parties** to:

- the Grievance Committee
- the state real estate licensing authority
- any other regulatory body

The prohibition is intended to **ensure impartiality** and avoid the possible appearance of **bias**.



What does a Grievance Committee do?

Reviews ethics complaints and arbitration requests to determine if a full due process hearing is warranted.

ETHICS

Is the complaint a violation of the Article(s) cited?

ARBITRATION

Is it related to a monetary dispute arising out of a real estate transaction that is subject to arbitration?

ETHICS:

Ethics complaints deal with the perceived unethical “action” or “conduct” of a REALTOR®.

The Grievance Committee ensures that:

- ethics complaints requests are in proper form
- the appropriate parties are named
- filing deadlines are followed
- litigation or governmental investigations aren't pending related to the same transaction or event that might delay consideration of the matter by a hearing panel
- the board can impanel an impartial hearing panel
- (for ethics) the right Articles are named, and if appropriate, Standards of Practice are cited to support the charge of a violation

CASE ACTIVITY CHECK LIST

CASE No.: _____

In the case of REALTOR ® vs. REALTOR®
Complainant(s)

Respondent(s)

DATE: _____ **TEAM ASSIGNED:** _____ **OMBUDSMAN ASSIGNED:** _____
Resolved: _____ No Further Action: _____ Pursue Complaint: _____

- _____ Complaint Received:
A. Letter outlining charge.
B. Signed Complaint Form.
- _____ CD copy mailed or E-Mailed to Chairman, Vice Chairman & Grievance Committee Members.
- _____ Copy mailed to Respondent(s).
- _____ Response due.
- _____ Response received.
- _____ Notification Response not received.
- _____ 2nd request Response received.
- _____ Copy of Response sent to Complainant(s).
- _____ Committee Reviewed:
A. Forwarded to Hearing Panel.
B. Dismissed as not warranting a Hearing.
C. Tabled for further information.
D. Complaint modified by Grievance Committee.
E. Tabled until Arbitration Case is Concluded.
- _____ Letter of Dismissal sent.
- _____ Letter stating the matter will go to a Hearing Panel enclosing a copy of the Professional Standards Committee Members and Challenge Forms.
- _____ Notice of Hearing sent to all Parties including the Outline of Hearing Procedure.
- _____ Hearing Reminder sent out to Both Parties & Panel Members.
- _____ Hearing Held.
- _____ Findings of Fact sent with information regarding Appeal.
- _____ Request for Appeal due.
- _____ Request for Appeal received.
- _____ If No Appeal - date of Directors ratification.
- _____ If Appealed - date of Directors determination.
- _____ Final Determination Letter sent.

What are grounds for a Grievance Committee appeal?

- If the Grievance Committee dismisses an ethics complaint or arbitration request
- Complainant may explain in writing why he/she/they disagrees with GC's conclusion
- Only original information and documents will be considered



What is a Professional Standards Hearing?

- Full “due process” hearings
- Fair, unbiased, and impartial
- To determine whether a violation of the Code occurred or an award should be rendered



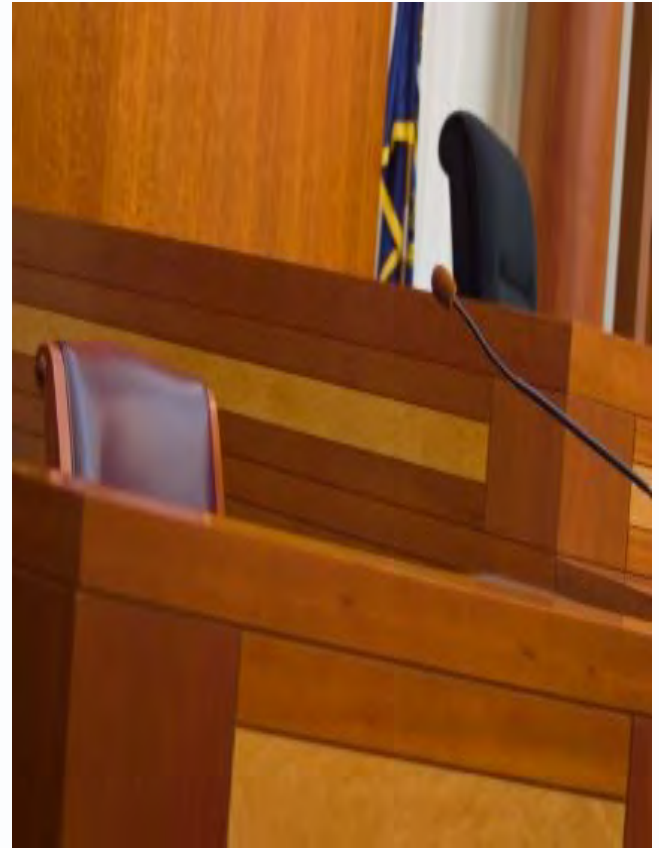
Ethics Hearings

Respondents are considered **innocent** unless proven to have violated the Code of Ethics.

The **burden of proof** in an ethics complaint is “**clear, strong and convincing.**”

What Happens at an Ethics Hearing?

1. Parties make an opening statement to present their case
2. Witnesses are called to provide testimony
3. Witnesses cross-examined by the other party
4. Supporting documents & information presented
5. Parties make closing arguments
6. Decision made based on the evidence



Authorized Discipline



Letters of warning or reprimand

Fines up to \$15,000

Attendance at educational courses/seminars

Suspension or termination of membership

Suspension or termination of services
including MLS

Cease or refrain from continued conduct deemed unethical or
take affirmative steps to ensure compliance with the Code

ETHICS APPEAL MUST BE BASED ON:

- Procedural deficiency or failure of due process
- A perceived misapplication or misinterpretation of one or more articles of the Code of Ethics
- Nature or Gravity of the discipline proposed by hearing panel

The fact that a hearing panel found no violation is NOT appealable

Arbitration Requests

Arbitration must fall within the parameters of **Article 17**

Contractual disputes involving money arising out of a real estate transaction.



What is Mediation?

A powerful tool to help REALTORS® and their clients resolve disputes that might otherwise be arbitrated.

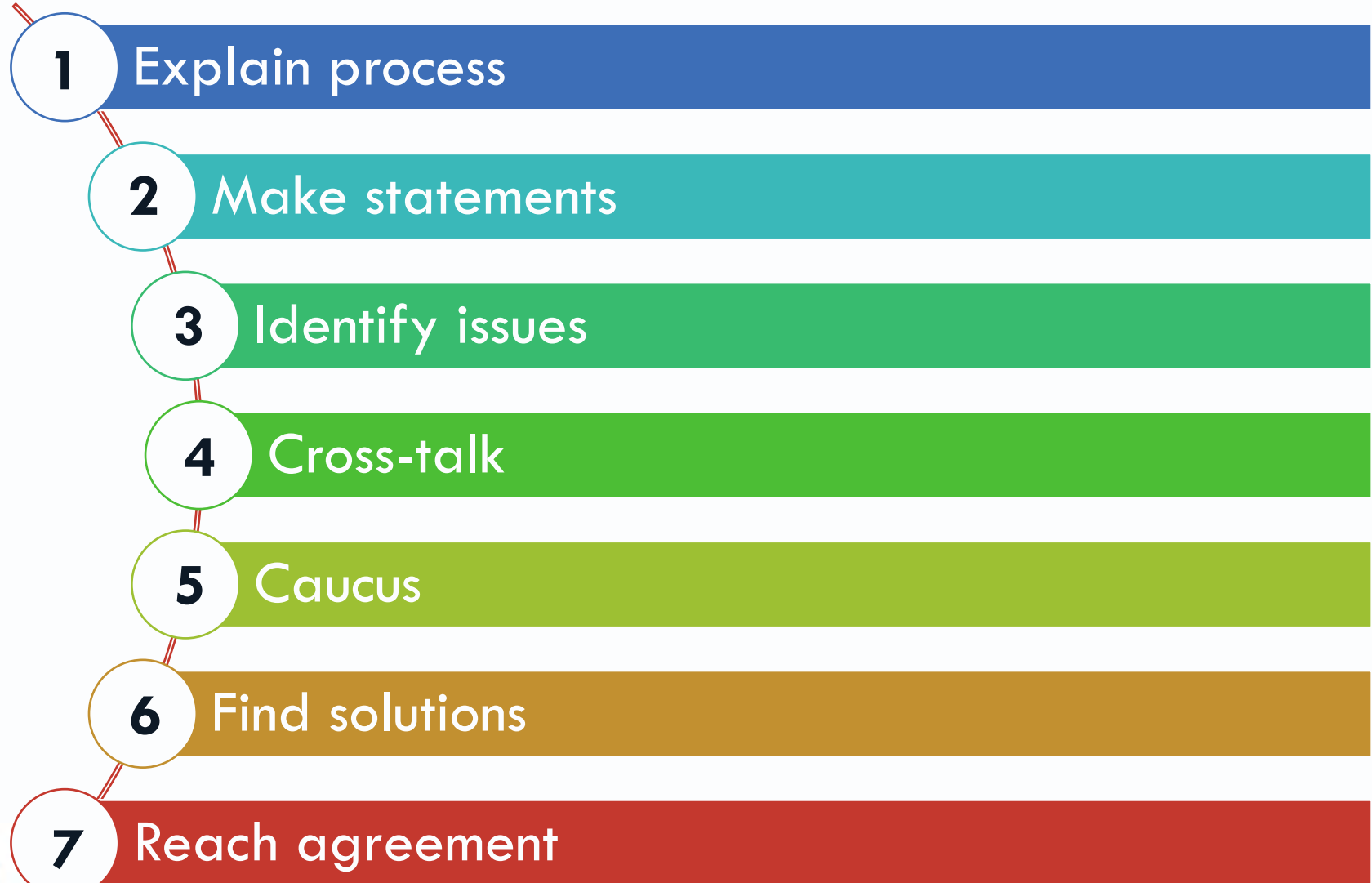


Mediation

The **mediation officer**, a neutral third-party, works with disputing parties to discuss the dispute and craft an enforceable resolution.



Mediation Process



What does a Grievance Committee do?

Reviews ethics complaints and arbitration requests to determine if a full due process hearing is warranted.

ETHICS

Is the complaint a violation of the Article(s) cited?

ARBITRATION

Is it related to a monetary dispute arising out of a real estate transaction that is subject to arbitration?

The Grievance Committee ensures that:

- arbitration requests are in proper form
- the appropriate parties are named
- filing deadlines are followed
- litigation or governmental investigations aren't pending related to the same transaction or event that might delay consideration of the matter by a hearing panel
- the board can impanel an impartial hearing panel
- (for arbitration) the amount involved is not too small or too large; and the complaint is categorized as mandatory or voluntary

CASE ACTIVITY CHECK LIST

CASE No.: _____

In the case of REALTOR ® vs. REALTOR®
Complainant(s)

Respondent(s)

DATE: _____ **TEAM ASSIGNED:** _____ **OMBUDSMAN ASSIGNED:** _____
Resolved: _____ No Further Action: _____ Pursue Complaint: _____

- _____ Complaint Received:
A. Letter outlining charge.
B. Signed Complaint Form.
- _____ CD copy mailed or E-Mailed to Chairman, Vice Chairman & Grievance Committee Members.
- _____ Copy mailed to Respondent(s).
- _____ Response due.
- _____ Response received.
- _____ Notification Response not received.
- _____ 2nd request Response received.
- _____ Copy of Response sent to Complainant(s).
- _____ Committee Reviewed:
A. Forwarded to Hearing Panel.
B. Dismissed as not warranting a Hearing.
C. Tabled for further information.
D. Complaint modified by Grievance Committee.
E. Tabled until Arbitration Case is Concluded.
- _____ Letter of Dismissal sent.
- _____ Letter stating the matter will go to a Hearing Panel enclosing a copy of the Professional Standards Committee Members and Challenge Forms.
- _____ Notice of Hearing sent to all Parties including the Outline of Hearing Procedure.
- _____ Hearing Reminder sent out to Both Parties & Panel Members.
- _____ Hearing Held.
- _____ Findings of Fact sent with information regarding Appeal.
- _____ Request for Appeal due.
- _____ Request for Appeal received.
- _____ If No Appeal - date of Directors ratification.
- _____ If Appealed - date of Directors determination.
- _____ Final Determination Letter sent.

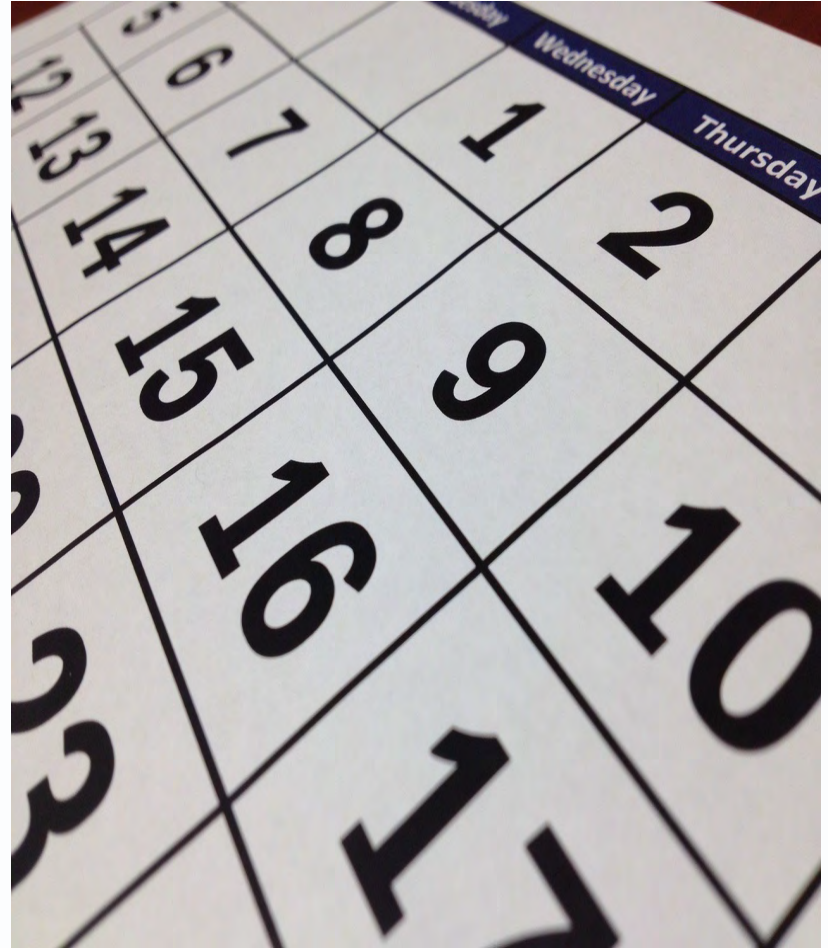
Arbitration

Requests must be filed
within **180 days** after:

1) the **closing**

OR

2) the **realization that
a dispute** existed,
whichever is later.

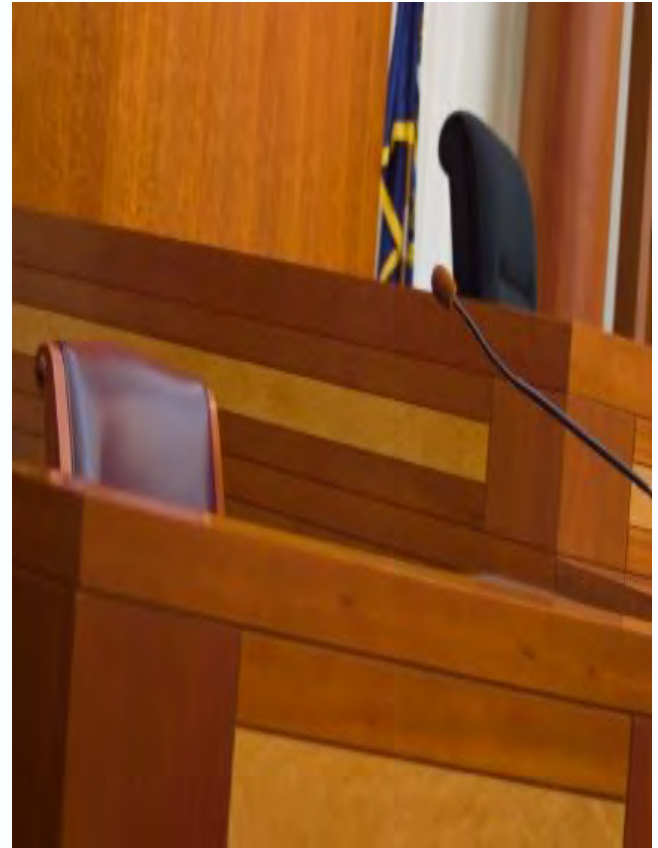


Who participates in arbitration?

Mandatory	Voluntary
REALTOR® principals associated with different firms	REALTORS® within the same firm
REALTOR® principals associated with different firms when requested by their REALTOR® licensees	REALTORS® and real estate professionals that do not hold REALTOR® membership
Clients and the REALTOR® principals who represent them as agents. In this situation, the client must agree to arbitrate the dispute through the association of REALTORS®.	REALTORS® and customers (no agency relationship)

What Happens at an Arbitration Hearing?

1. Parties make an opening statement to present their case
2. Witnesses are called to provide testimony
3. Witnesses cross-examined by the other party
4. Supporting documents & information presented
5. Parties make closing arguments
6. Decision made based on the evidence



Arbitration Hearing Results

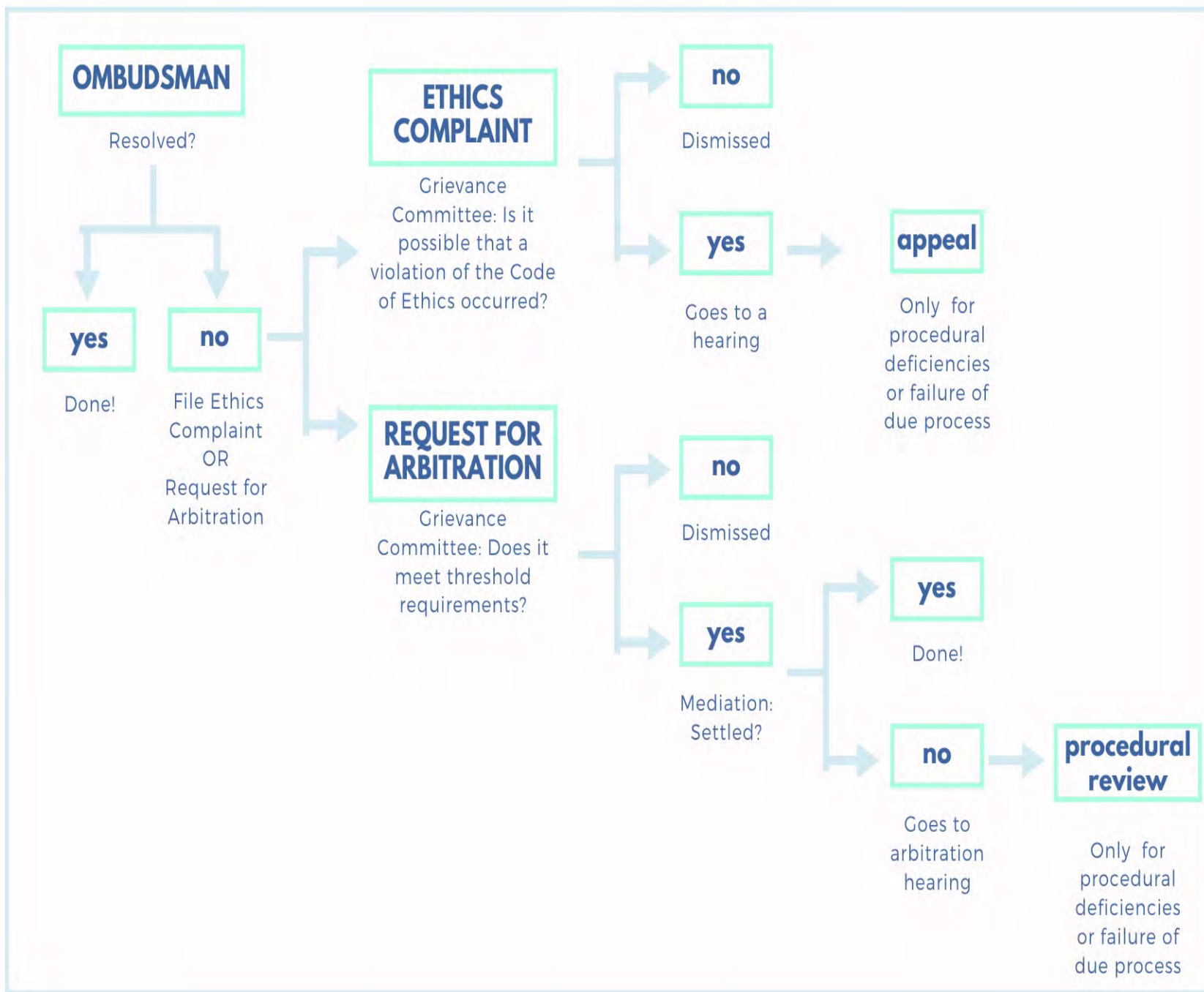
The panel will award an amount to the prevailing party.

The amount cannot be more than what was requested in the arbitration request, though it can be less.

Can submit for Procedural Review

Ombudsman, Mediation and Arbitration

Ombudsman	Mediation	Arbitration
No cost	Low-cost	Moderate cost
No delay	Little delay	Moderate delay
Maximum flexibility, may open dialogue	Maximum range of solutions	Win/lose/split
Parties control outcome	Parties control outcome	Arbitrators control outcome
Maintain/improve relationship	Maintain/improve relationship	May harm relationships
Communicate typically via phone	Mediation usually held in person	Arbitration in person (unless remote)



PART 5:
CASE STUDIES
OF
SELECTED ARTICLES
OF THE
CODE OF ETHICS



Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client.

This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.




ARTICLE 1 – CASE INTERPRETATION (HONEST TREATMENT OF ALL PARTIES)

As the exclusive agent of Client A, REALTOR® B offered Client A's house for sale, advertising it as being located near a bus stop. Prospect C, who explained that his daily schedule made it necessary for him to have a house near the bus stop, was shown Client A's property, liked it, and made a deposit. Two days later, REALTOR® B read a notice that the bus line running near Client A's house was being discontinued. He informed Prospect C of this, and Prospect C responded that he was no longer interested in Client A's house since the availability of bus transportation was essential to him. REALTOR® B informed Client A and recommended that Prospect C's deposit be returned. Client A reluctantly complied with REALTOR® B's recommendation, but then complained to the Board of REALTORS® that REALTOR® B had not faithfully protected and promoted his interests; that after Prospect C had expressed his willingness to buy, REALTOR® B should not have made a disclosure that killed the sale since the point actually was not of major importance. The new bus route, he showed, would put a stop within six blocks of the property.

ARTICLE 1 – CASE INTERPRETATION (CONTINUED)

In a hearing before a Hearing Panel of the Board's Professional Standards Committee, REALTOR® B explained that in advertising Client A's property, the fact that a bus stop was less than a block from the property had been prominently featured. He also made the point that Prospect C, in consulting with him, had emphasized that Prospect C's physical disability necessitated a home near a bus stop. Thus, in his judgment, the change in bus routing materially changed the characteristics of the property in the eyes of the prospective buyer, and he felt under his obligation to give honest treatment to all parties in the transaction, that he should inform Prospect C, and that in so doing he was not violating his obligation to his client.



Do you think Realtor B is in
violation of the Code?



The Hearing Panel concluded that REALTOR® B had not violated Article 1, but had acted properly under both the spirit and the letter of the Code of Ethics. The panel noted that the decision to refund Prospect C's deposit was made by the seller, Client A, even though the listing broker, REALTOR® B, had suggested that it was only fair due to the change in circumstances.

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

ARTICLE 2- CASE INTERPRETATION (DISCLOSURE OF PERTINENT FACTS)

REALTOR® A, acting as a management agent, offered a vacant house for rent to a prospective tenant, stating to the prospect that the house was in good condition. Shortly after the tenant entered into a lease and moved into the house, he filed a complaint against REALTOR® A with his Board of REALTORS®, charging misrepresentation, since a clogged sewer line and a defective heater had been discovered, contrary to REALTOR® A's statement that the house was in good condition. At the hearing, it was established that REALTOR® A had stated that the house was in good condition; that the tenant had reported the clogged sewer line and defective heater to REALTOR® A on the day after he moved into the house; that REALTOR® A responded immediately by engaging a plumber and a repairman for the heater; that REALTOR® A had no prior knowledge of these defects; that he had acted promptly and responsibly to correct the defects, and that he had made an honest and sincere effort to render satisfactory service.

A man in a dark suit and white shirt stands with his back to the camera, looking at a large brick wall. His arms are crossed, and he appears to be in deep thought. The wall is made of reddish-brown bricks, and the floor is a light-colored, polished surface. The lighting is soft, creating a slight shadow of the man on the wall behind him.

**Do you think Realtor A is in
violation of the Code?**



It was the Hearing Panel's decision that REALTOR® A
was not in violation of Article 2.

Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest.

The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker.

ARTICLE 3- CASE INTERPRETATION (COOPERATION NOT MANDATORY)

Client A called on REALTOR® B to list a small commercial property. In stipulating the price at which he wished to list the property, Client A explained that he was aware that it was a relatively low price, but he wanted a quick sale and, he added, a higher price could benefit very little at that time because of certain tax considerations. He told REALTOR® B that a number of prospective buyers had spoken to him about the property within the past year. He gave their names to REALTOR® B and said he felt sure that among them there would be a ready buyer at the price. He told REALTOR® B that he wanted the property submitted to them first.

The next day, REALTOR® C, who had unsuccessfully solicited the listing and learned that the property was listed exclusively with REALTOR® B, called REALTOR® B to ask that he be accepted as a cooperating broker. REALTOR® B told REALTOR® C that the best service to his client did not require cooperation; that a prospective buyer was at that time seriously considering the property; and that under the circumstances he preferred not to invite cooperation. REALTOR® C complained to the Association of REALTORS® charging REALTOR® B with a violation of Article 3 by refusing to cooperate. Pursuant to the complaint a hearing was scheduled before a Hearing Panel of the Association's Professional Standards Committee. During the hearing, REALTOR® B outlined fully the circumstances under which the property had been listed by him, and maintained that the interest of Client A would not be advanced by acceptance of cooperation by REALTOR® C.



Do you think Realtor B is
in violation of the Code?



The panel concluded that REALTOR® B's reasons for not accepting cooperation in this instance were valid and that his action did not constitute a violation of Article 3.

Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative



ARTICLE 4– CASE INTERPRETATION (FIDELITY TO CLIENT)

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about \$150,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of \$97,500 and the client agreed. In two weeks, REALTOR® B came to Client A with an offer at the listed price of \$97,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to \$150,000 than \$97,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment in pricing the lot. Client A finally agreed and the sale was made to Buyer C. Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at \$165,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for \$97,500. Client A outlined the facts in a complaint to the Association of REALTORS®, charging REALTOR® B with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf. At a hearing before a panel of the Professional Standards Committee, REALTOR® B's defense was that in his observation of real estate transactions there can be two legitimate prices of property—the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to take and the buyer paid a price that he was willing to pay.

A man in a dark suit and white shirt stands with his back to the camera, looking at a large brick wall. His arms are crossed, and he appears to be in deep thought. The wall is made of reddish-brown bricks, and the floor is a light-colored, polished surface. The lighting is soft, creating a slight shadow of the man on the wall behind him.

**Do you think Realtor B is in
violation of the Code?**



YES!

The Hearing Panel concluded that REALTOR® B had deceitfully used the guise of rendering professional service to a client in acting as a speculator; that he had been unfaithful to the most basic principles of agency and allegiance to his client's interest; and that he had violated Articles 1 and 4 of the Code of Ethics.

Article 6


REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such



ARTICLE 6 – CASE INTERPRETATION (PROFIT ON SUPPLIES USED IN PROPERTY MANAGEMENT)

REALTOR® A, a property manager, bought at wholesale prices, janitorial supplies used in cleaning and maintenance of an office building which he managed for his client, Owner B. In his statements to Owner B, he billed these supplies at retail prices. REALTOR® A's practice came to the attention of Owner B who filed a complaint with the local Association of REALTORS®, charging REALTOR® A with unethical conduct in violation of Article 6 of the Code of Ethics. In questioning during the hearing called by the Association's Professional Standards Committee, REALTOR® A's defense was that the prices at which he billed these supplies to his client were no higher than the prices which Owner B had been paying prior to putting the property under REALTOR® A's management. It was clearly established that no disclosure of this profit or supplies used in property management had been made, and also that in proposing the management contract, REALTOR® A had held out to Owner B the inducement of attainable economies in operation.



Do you think Realtor A is in
violation of the Code?



REALTOR® A was found by the Hearing Panel to be in violation of Article 6

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.



ARTICLE 11 – CASE INTERPRETATION (COMPETENCE FOR ASSIGNMENT)

REALTOR® A sold a light industrial property to Buyer B, a laundry operator. Several months later, Buyer B engaged REALTOR® A's services to appraise the property and to supply an appraisal report for use in possible merger with another laundry. REALTOR® A carried out this appraisal assignment and submitted his report. Buyer (now Client) B was dissatisfied with the report feeling that the valuation, in comparison with the market price that he had paid was excessively low. Client B then engaged an appraiser specializing in industrial property, and after receiving the second appraisal report, filed a complaint with the Board of REALTORS® charging REALTOR® A with incompetent and unprofessional service as an appraiser.



Do you think Realtor B is
in violation of the Code?



At the hearing, questioning established that REALTOR® A could cite no other industrial property appraisal he had made, and that his appraisal experience had been limited exclusively to residential property. The hearing also established that when the client proposed the appraisal, REALTOR® A had readily accepted the assignment and that he had at no time disclosed the extent and limitations of this appraisal experience with his client. REALTOR® A was found by the Hearing Panel to be in violation of Article 11.


Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate

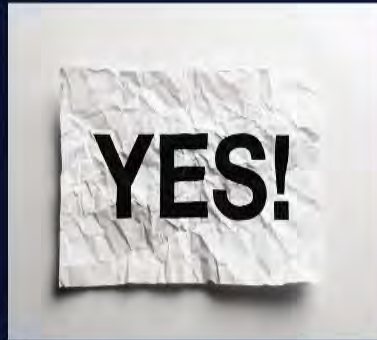


ARTICLE 12 – CASE INTERPRETATION (ABSENCE OF NAME SIGN)

Prospect A observed a sign on a vacant lot reading: “For Sale – Call 330-5215.” Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised that the lot was exclusively listed by REALTOR® A, and the telephone number on the sign was the home number of REALTOR® B in REALTOR® A’s office. Prospect A filed a complaint against REALTOR® A and REALTOR® B alleging a violation of Article 12 of the Code of Ethics. At the hearing, REALTOR® A stated that he permitted REALTOR® B to put up the sign. REALTOR® B’s defense was that the sign was not a “formal” advertisement, such as an online advertisement, business card, or billboard, to which he understood Article 12 to apply.

A man in a dark suit and white shirt stands with his back to the camera, looking at a large brick wall. His arms are crossed, and he appears to be in deep thought. The wall is made of reddish-brown bricks, and the floor is a light-colored, polished surface. The lighting is soft, creating a slight shadow of the man on the wall behind him.

**Do you think Realtor A or B is in
violation of the Code?**



The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR® B were in violation of Article 12.

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.

ARTICLE 16 – CASE INTERPRETATION CONTINUED CONTACT WITH POTENTIAL SELLER WHO ENTERS INTO AN EXCLUSIVE LISTING WITH ANOTHER REALTOR®

At the conclusion of a detailed listing presentation, REALTOR® B asked the sellers whether they had any questions. “No,” said Seller Z. “Your presentation was professional and complete and we very much appreciate your time. We have appointments with two other firms and after we talk to them we’ll make our decision.” REALTOR® B thanked the sellers and encouraged them to contact him with any questions they might have. “I really look forward to being your broker,” he added. Several days later, REALTOR® B noticed that Seller Z’s property had come on the market listed with REALTOR® A. REALTOR® B and REALTOR® A were friends, but were also quite competitive, both frequently pursuing the same potential seller-clients. Realtor B called Seller Z and asked, “What I’d like to know is why you chose to give your listing to REALTOR® A instead of me?” he then asked. “Don’t get me wrong, REALTOR® A is a good broker and will do a good job for you. I’m not suggesting you cancel your listing with REALTOR® A but, if your listing expires and REALTOR® A hasn’t sold it, I’d be pleased to talk to you about listing with me.” Seller Z did not follow up on REALTOR® B’s offer and the following weekend at REALTOR® A’s open house Seller Z and his wife recounted REALTOR® B’s follow-up phone call. Over the next few days REALTOR® A debated filing an ethics complaint. He weighed his friendship with REALTOR® B against what he saw as his duty to bring potentially unethical conduct to the attention of the association of REALTORS®. Somewhat reluctantly, he filed an ethics complaint alleging a violation of Article 16, as interpreted by Standard of Practice 16-13.

ARTICLE 16 – CASE INTERPRETATION (CONTINUED)

At the hearing, REALTOR® A called Seller Z as a witness. Seller Z faithfully recounted the substance of REALTOR® B's conversation with Seller Z and his wife, commenting that while REALTOR® B had said he was only trying to understand why he hadn't been given the listing, it appeared to Seller Z that REALTOR® B wanted Seller Z to cancel his listing with REALTOR® A. Then REALTOR® B testified in his own defense. He acknowledged he had been aware that REALTOR® A had already exclusively listed the property when he contacted Seller Z and asked for a follow-up appointment. He defended his actions stating he was not trying to induce Seller Z to cancel the listing, he was simply trying to find out what he had said – or failed to say – that led Seller Z to list with REALTOR® A instead of with him, and wanted Seller Z and his wife to be fully aware of the services he would provide if their listing with REALTOR® A expired.

YES

Do you think Realtor B is
in violation of the Code?

NO



YES!

The Hearing Panel did not agree with REALTOR® B's defense, noting that REALTOR® B's curiosity or desire to enhance his listing presentation skills did not justify continued contact with a potential seller-client after that seller had entered into an exclusive representation agreement with another broker. REALTOR® B was found in violation of Article 16 as interpreted by Standard of Practice 16-13.

PART 6:
PATHWAYS TO
PROFESSIONALISM
& MARKETING THE
CODE OF ETHICS



Using the Code of Ethics in Your Business

- Provides a competitive advantage
- Guarantees customer will receive accurate, timely information and their interests will always be served first
- Use as a tool when training new agents
- A continual reminder of the professional services REALTORS® provide

Look to the Code for Guidance

- Use it to model your professional behavior when confronted with questions such as . . .
 - Should I work with more than one agent?
 - What do you think about this other agent?



Available in 15 Languages

- You can assist foreign buyers who might have difficulty understanding the code by printing it in a language they understand
 - English
 - Chinese (simplified and traditional)
 - Danish
 - French
 - German
 - Italian
 - Japanese
 - Korean
 - Portuguese
 - Romanian
 - Russian
 - Spanish
 - Tagalog
 - Vietnamese

The Code of Ethics and Social Media

Article 12 provides guidelines on communication

Be honest and truthful in all communication including social media

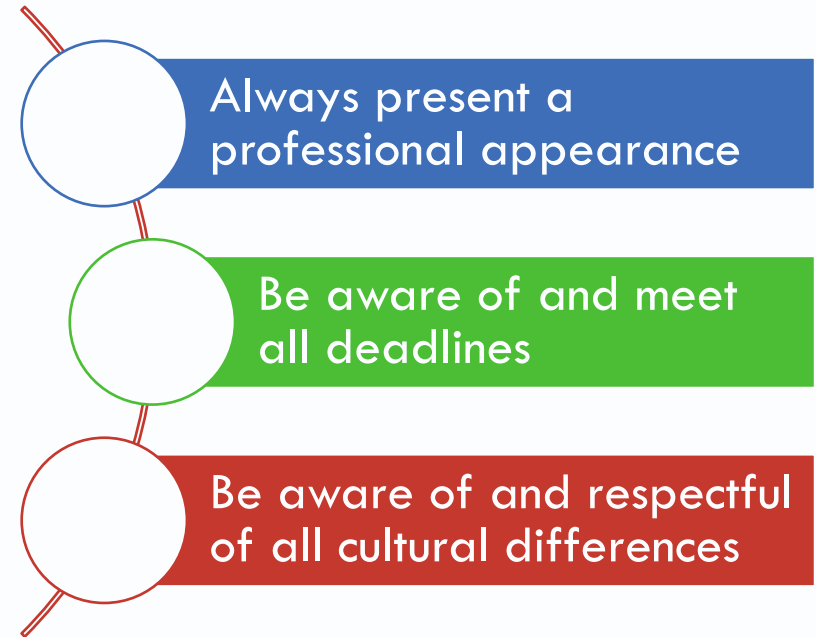
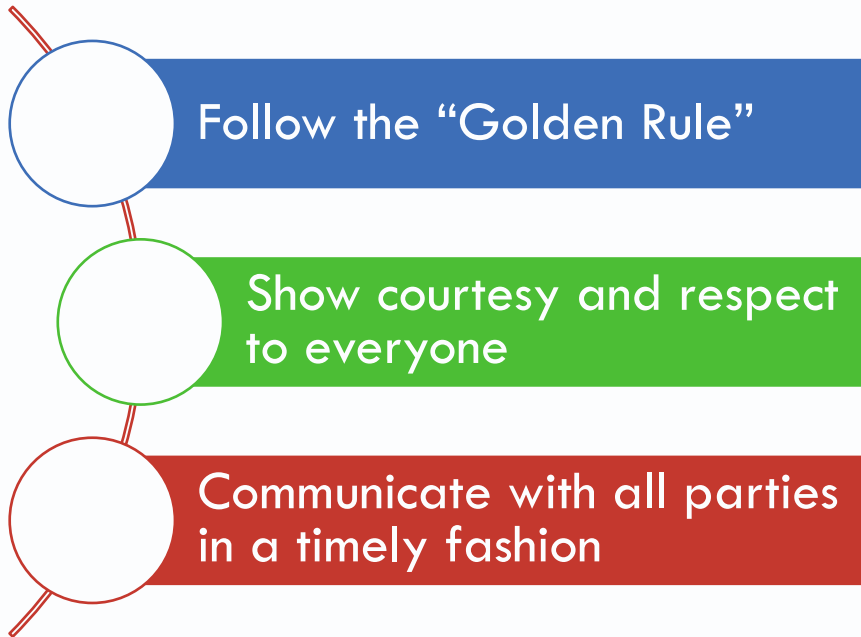
Remind clients to also practice discretion online

Promote your Ethical Responsibility to the Consumer

- The Code can be used as a marketing tool
- Shows consumer you have agreed to abide by this standard of professionalism
- Code can be printed and customized with your company name
- Display your REALTOR® pin
- Reference the code in all your professional correspondence



The Pathway to Professionalism: Six Timeless Tips



<http://bit.ly/pathwaysprofessionalism>

Respect for Property



- Be responsible
- Keep all members of the group together
- Never give unaccompanied access
- Enter property only with permission
- Leave property as you found it
- Contact listing broker if something is amiss
- Be considerate of sellers' property
- Use sidewalks to protect landscaping
- Remove footwear in inclement weather
- Avoid cell phone distractions during showing
- Be alert to avoid the unexpected
- Practice respect when owner is home during showing
- Open House **bit.ly/OpenHouseGuidelines**
- Showing Guidelines **bit.ly/ShowingGuidelines**

Respect for the Public



- Identify your REALTOR® and professional status
- Leave your business card unless prohibited by local rules
- Encourage clients of other agents to direct questions to that agent
- Don't tell people what you think, tell them what you know
- Respond promptly to inquiries
- Call if you're delayed or need to reschedule
- Promptly explain to listing agent if showing is cancelled
- Communicate clearly—avoid jargon and slang.
- Schedule appointments as far in advance as possible
- Promise only what you can deliver

Respect for Peers



- Identify your REALTOR® and professional status
- Promptly and courteously respond to other agents' communications
- Notify listing broker if there is inaccurate information in listing
- Share important information with other agents such as pets or a security system
- Show courtesy, trust, and respect to other agents
- Avoid inappropriate use of endearments or language that may be culturally insensitive
- Do not prospect at other agents' open houses or events
- Return keys promptly after a showing

Maggie Curiel, PSA ePro AHWD

VP of Coral Gables, Professional Standards, &
Broker Relations

maggie@miamire.com | 305-468-7089



Xochitl Rieche

Professional Standards Manager

xochi@miamire.com | 305-468-7044

Evian White De Leon

Chief Legal Counsel

evian@miamire.com | 305-468-7000



PART 7:
CONCLUSION

